

1 unclear about the decisionmaking. Are you saying  
2 decision making within this sphere of those meetings,  
3 and the issues that are being discussed there, or do  
4 you mean independent of that?

5 A The most -- most frequently decisions would have had  
6 to have been made to keep things progressed, like at  
7 those meetings, and also if other issues came up, I  
8 can't think of one specifically, but it could have  
9 been an HR-related matter, could have been someone  
10 needing additional time off, shift change, problems  
11 with someone's performance in the field of a given day  
12 that needed to be addressed or other managerial  
13 matters that I would have normally maybe been -- been  
14 addressing.

15 Q Okay. Well, for instance, I think yesterday we heard  
16 about apparently the administrative staff, Kim and  
17 somebody else, seemed to be going at it as it were.  
18 Is that a situation that you eventually dealt with and  
19 got resolved?

20 A Initially it was dealt with by Ron Kirk, which John's  
21 alternate.

22 Q Uh-hum.

23 A And the resolution that he came up with wasn't  
24 satisfying to the two people that had issues, so we --  
25 it eventually made it to me, and we took a different

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1 action.

2 Q And was that letting one of them go or.....

3 A Actually, no, we had a discussion of working more  
4 collaboratively together and fixing some problems.  
5 Eventually there was a reduction in force that  
6 eliminated one of those positions, but it was not  
7 associated with this performance issue.

8 Q Okay. All right. And so as far as specific examples  
9 of what a safety supervisor, or Mr. Gilbert might have  
10 done as safety supervisor, outside of what we've  
11 already discussed, do you have any other examples you  
12 can give me?

13 A If I was on shift, I would normally have been the  
14 facilitator on some of the safety meetings. And in my  
15 absence, I expected those to continue to be held, and  
16 the facilitator role of that fell to the supervisory  
17 position.

18 Q Okay. If there was a -- and I don't know if this  
19 happened or not, and you can comment in that regard,  
20 but if there was a time when you're not there, and  
21 there's no safety supervisor there, then would a  
22 safety specialist be the facilitator for the meeting?

23 A Only if they're stepped up into that supervisory role.

24 Q Okay. When Mr. Gilbert was a safety specialist, do  
25 you know if he ever was stepped up into safety

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1 -- and you have had safety specialists, safety  
2 supervisor, and safety coordinator -- is that the name  
3 of the coordinator job?

4 A The new position is called a safety coordinator.

5 Q Okay. What activities are co-extensive to all those  
6 positions, if any?

7 A Ones that bridge all those positions?

8 Q Yeah. In other words, what jobs, what tasks do each  
9 one of those guys do that are the, you know, if you do  
10 -- for instance, does each one of those jobs do hot  
11 work permits?

12 A We're talking routine tasks or what tasks you may do?

13 Q Well -- yeah. Well, let's start with may. Do each  
14 one of those jobs do hot work permits?

15 A Any of our positions may do a hot work permit.

16 Q Okay. And each one -- okay. And the same as to  
17 confined space entry?

18 A That's correct.

19 Q Okay. The same as to walk-downs or audits?

20 A That's correct.

21 Q The same as to PP&G revision and update?

22 A No.

23 Q Okay. Who would or wouldn't be doing that?

24 A The specialist may have input into the language of a  
25 particular policy or procedure but final authority

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1 over the final content and for regulatory compliance  
2 and final approval would come from a higher authority,  
3 supervisor or manager's position.

4 Q Okay. Did the supervisors routinely sign off on the  
5 revised PP&G?

6 A There is not a particular sign-off location on any of  
7 those policies.

8 Q If there's a new P -- a newer, revised PP&G, wouldn't  
9 that be something that's passed by you and got your  
10 approval in one form or another?

11 A Ultimately it would have to go to corporate for  
12 approval.

13 Q Okay. All right. Besides those tasks I mentioned to  
14 my recollection and thinking, that comprises a large  
15 portion of what a safety specialist does, and I think  
16 you're telling me you don't -- or is that so?

17 A That's only a portion of what they do. Permitting is  
18 actually probably only 20 percent of their activity.

19 Q Okay. So beyond that -- well, there's permitting and  
20 auditing -- okay. What else would you expect the  
21 safety specialist to be doing?

22 A From an auditing perspective, that does cover the  
23 field presence of going out and being visible to  
24 employees, looking for compliance, coaching of  
25 employees in safe practices, just insuring that people

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1 to be paid for every hour worked without the overtime  
2 premium?

3 A More based on my interpretation of the -- kind of the  
4 80/20 rule of how much percentage of time that  
5 position would routinely perform duties that would  
6 fall into a non-exempt category.

7 Q Okay. So the reason why the safety supervisor  
8 wouldn't get paid for every hour worked was because in  
9 your opinion they weren't spending 20 percent of their  
10 time doing non-exempt work?

11 A That's the largest component with the additional  
12 component being that I viewed them to be more  
13 supervisory in nature because of the department  
14 configuration of the organization.

15 Q Okay. I think you've already told us you're not aware  
16 of Carr's letter.

17 MR. COVELL: But let's go ahead and get that,  
18 Madame Clerk, out of the B exhibits.

19 MS. ZOBEL: I'm going to object to questions  
20 in which you're asking him to draw legal conclusions with  
21 regard to these payments. I think that's for the court to  
22 decide in this case.

23 MR. COVELL: Okay. That's fine. Objection's  
24 noted.

25 COURT REPORTER: So the last two look like the

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1 paragraph referencing 8 AAC 15.910(14) seem to set out  
2 the supervisory test?

3 A This supervisory test as spelled out here with these  
4 embedded employees mainly getting their daily task  
5 direction from their, as we called them at the time,  
6 clients that they were assigned to. Even though they  
7 were internal APC personnel, we've referred to them as  
8 our clients from the safety department. Their daily  
9 direction was determined a lot by their activities and  
10 direction, so our functionality was less daily  
11 direction and more administration facilitation,  
12 scheduling, the HR functionality, department  
13 directions, implementation of policy and procedure.

14 Q Okay. Thank you for that answer. Does this seem to  
15 set out what the test for a supervisory employee would  
16 be? That is, an exempt supervisory employee?

17 MS. ZOBEL: To the extent you're asking for a  
18 legal conclusion, I object.

19 MR. COVELL: Thank you.

20 A So what you're asking me, just for clarification is  
21 the first.....

22 MR. COVELL: Let me withdraw the question.

23 A .....the first indented paragraph?

24 Q (By Mr. Covell) Is this -- is this the test for a  
25 supervisory employee exemption?

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1 A As I know of it, yes.

2 Q Okay. All right. All right. And then did the  
3 position of safety supervisor that Mr. Gilbert  
4 occupied meet this test for exemption?

5 A so for clarification, you're asking me if that  
6 position met the exemption per this test as  
7 supervisory?

8 Q Right.

9 A I -- I feel like it does not meet supervisory, that it  
10 meets administrative more than supervisory based on  
11 the context of this paragraph.

12 Q Okay. And which elements of this paragraph doesn't  
13 the safety supervisor position meet?

14 A The being employed solely for the purpose of regularly  
15 assigning the activities, directing activities of  
16 other employees. So -- and the regularly assigning,  
17 that regularly assigning component is more of a  
18 functionality that took place at the embedded site.

19 Q Okay. Okay. And then -- let's see. And then would  
20 you say the safety supervisor was responsible for  
21 results of the work performed of other employees? I  
22 guess would you -- okay. Would you say that's so or  
23 not, the safety supervisor is responsible for the  
24 results of the work performed by other employees?

25 A Not directly. The specialists were more responsible

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1 for their performance at their embedded location than  
2 transferred to supervisor.

3 Q Okay. So if the specialist was having a product -- or  
4 a work product problem, you'd go talk to the  
5 specialist and not Mr. Gilbert and say -- is that  
6 fair?

7 A No, John or I both may talk to that person. The  
8 supervisor or the manager may speak to that person on  
9 performance, but as I read -- understand, this is to  
10 be more of an accountability perspective, that the  
11 supervisor would be accountable for the performance of  
12 his employees working under him.

13 Q Okay. And it's -- am I correct in understanding that  
14 you never did an analysis of any other positions  
15 besides Fort Greeley for APC or otherwise that  
16 entailed this -- the issue of whether or not an  
17 individual would get paid for, quote, all hours  
18 worked, unquote?

19 A That's correct.

20 Q Okay. All right. There are numerous people in the  
21 safety specialist and supervisor position, and  
22 numerous people have gone through those jobs. Do you  
23 think as a whole that they would agree or disagree  
24 with the proposition that largely the safety  
25 supervisor did the same work as the safety specialist?

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1 could or couldn't do in that regard, right?

2 A I don't think entirely. I think you asked me if he  
3 performed any disciplinary action or had hire and fire  
4 authority correct?

5 Q Right.

6 A And in -- as I look to that position, when we were  
7 making changes to a department, when -- and the  
8 organization when through a metamorphosis quite a bit  
9 during John's tenure, that that position was -- was  
10 consulted with on who was our top performers as we  
11 were reducing personnel. You know, who were the  
12 keepers and who were the guys who were at the bottom  
13 of performance level.

14 Q Okay. All right. And we talked about -- well, did he  
15 ever discipline anybody that you know of?

16 A Not in my recollection was there any disciplinary  
17 action handed out from that position.

18 Q Okay. All right.

19 A I'd like to clarify one thing.

20 Q Sure.

21 A That in my whole tenure there, I only took one  
22 disciplinary action in the whole time, so it wasn't  
23 very frequent.

24 Q Okay. Okay. Approval of timesheets and other  
25 employee/management functions. Did the safety

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